Highway Drivers, Dockmen, Spotters, Rampmen, Meat, Packing House and Allied Products Drivers and Helpers, Office Workers and Miscellaneous Employees Local Union No. 710, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America *and* Yellow Freight System, Inc. and Automobile Mechanics Local No. 701, International Association of Machinists & Aerospace Workers, AFL-CIO. Case 13-CD-331

30 March 1984

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN DOTSON AND MEMBERS ZIMMERMAN AND DENNIS

The charge in this Section 10(k) proceeding was filed 11 July 1983 by the Employer, alleging that the Respondent, Teamsters Local 710, violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees it represents rather than to employees represented by Machinists Local 701. The hearing was held 12 August 1983 before Hearing Officer Lorraine Pratte.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

The Company, an Indiana corporation, is engaged in the interstate transportation of freight by motor vehicle at its facility in Chicago Ridge, Illinois, where it annually derives revenues in excess of $50,000 from the interstate transportation of freight. The parties stipulate, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that Teamsters Local 710 and Machinists Local 701 are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. *Background and Facts of Dispute*

Prior to 4 April 1981[1] the Employer maintained a break bulk terminal at Effingham, Illinois. Employees classified servicemen performed the fueling of trailers and forklifts. Dockmen operated the forklifts. A Teamsters local represented both servicemen and dockmen.

On 4 April the Employer closed the Effingham terminal and on 4 May opened a temporary terminal at Bedford Park, Illinois. The Employer eliminated the serviceman classification and transferred only servicemen who were qualified journeyman mechanics from Effingham to Bedford Park. The mechanics performed the fueling work at Bedford Park.

On 23 August the Employer moved its operation from Bedford Park to Chicago Ridge, Illinois. Initially at Chicago Ridge, mechanics performed the fueling work, including fueling forklifts, but in November the Employer reassigned the fueling of forklifts to the dockmen who operated the forklifts. Mechanics continued to perform fueling of trailers in the shop and service lanes.

On 5 June Machinists Local 701 filed a petition to represent the mechanics at Bedford Park. On 31 October the mechanics selected Machinists Local 701 as their bargaining representative. On 9 August 1982 the Employer signed a collective-bargaining agreement with Machinists Local 701. Teamsters Local 710 represented the dockmen at Bedford Park.

On 23 or 24 August 1982 Machinists Local 701 filed a grievance claiming the forklift fueling work at Chicago Ridge for employees it represented. When the Employer's labor manager, Robert Stultz, informed Teamsters Local 710's business representative, Johnny Altepeter, of the grievance, Altepeter stated that Teamsters Local 710 did not intend to give up the fueling work and would take whatever economic action was necessary to retrieve the work if the Employer reassigned the work to mechanics. Altepeter reiterated this position to Stultz about 10 weeks later.

In March or April 1983 Altepeter spoke with the Employer's vice president of labor relations, William Curry. Curry told Altepeter that Stultz feared Teamsters Local 710 might strike over the disputed work. Altepeter advised Curry that he had informed Stultz that Teamsters Local 710 "would take whatever means [it had] to try to preserve the work or get it back." When Curry asked if this meant a strike, Altepeter responded, "Well, you said it. I didn't."

B. *Work in Dispute*

The disputed work involves the fueling of forklift trucks at the Chicago Ridge, Illinois terminal.

[1] All subsequent dates refer to 1981 unless otherwise indicated.

C. *Contentions of the Parties*

The Employer and Teamsters Local 710 contend that the work in dispute should be assigned to employees Teamsters Local 710 represents, arguing that the Employer's preference and past practice; area and industry practice; and economy, efficiency, and safety favor such an award. Teamsters Local 710 further claims that its contract with the Employer covers the work in dispute.

Machinists Local 701 contends that the notice of hearing should be quashed, asserting that no triggering event for a 10(k) hearing occurred within the 10(b) period and that consequently there is no reasonable cause to believe Section 8(b)(4)(D) has been violated. In the alternative, Machinists Local 701 claims that its certification as the mechanics' representative and the Employer's past practice favor awarding the disputed work to the mechanics it represents.

D. *Applicability of the Statute*

As mentioned above, upon learning of Machinists Local 701's grievance, Teamsters Local 710's business representative, Altepeter, twice informed the Employer's labor manager, Stultz, that Teamsters Local 710 would take whatever economic action was necessary to retrieve the forklift fueling work if the Employer reassigned the disputed work to mechanics. Further, Altepeter repeated to the Employer's vice president of labor relations that Teamsters Local 710 "would take whatever means [it had] to try to preserve the work or get it back." Based upon the foregoing and the record as a whole, we find that an object of Teamsters Local 710's action was to force the Employer to continue to assign the disputed work to individuals represented by Teamsters Local 710.

The parties stipulated there is no agreed method for the voluntary adjustment of the dispute to which all parties are bound.

We find reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred and that there exists no agreed method for voluntary adjustment of the dispute within the meaning of Section 10(k) of the Act. Accordingly, we find that the dispute is properly before the Board for determination.[2]

[2] Machinists Local 701's motion to quash the notice of hearing is denied. Regarding the argument that there was no triggering event within the 10(b) period, we note that Altepeter's conversation with Curry occurred less than 6 months prior to the filing of the charge. We further note that, although events outside the 10(b) period cannot be grounds for a violation of the Act, those events may shed light on specific conduct occurring within the 10(b) period.

E. *Merits of the Dispute*

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of this dispute.

1. Certification and collective-bargaining agreements

Machinists Local 701 contends that its certification as representative of the mechanics covers the disputed work. To support this contention, Machinists Local 701 points out that the Regional Director's Decision and Direction of Election refers to "fueling," which Machinists Local 701 insists encompasses the fueling of forklifts. Review of the record in the certification case[3] discloses, however, that the Regional Director mentioned fueling in the shop and service lanes rather than on the dock, where the disputed work is now performed. We are unable to conclude from this record that the certification covers the work in dispute. Accordingly, we find that the certification factor favors awarding the work in dispute to neither group of employees.

The Employer currently has collective-bargaining agreements with both Teamsters Local 710 and Machinists Local 701. Teamsters Local 710 rests its argument that its collective-bargaining agreement covers the work in dispute on the fact that its contract contains a fuelman classification and that Machinists Local 701's contract has no such provision. We find this argument unpersuasive. We note that nothing in the Teamsters Local 710 contract specifies the disputed work will be done by fuelman. We further note that mechanics perform some fueling work that is not in dispute. Under these circumstances, we find that Teamsters Local 710's contract is too vague and ambiguous to warrant a finding that it covers the work in dispute. Consequently, we conclude that the collective-bargaining agreements favor an award of the disputed work to neither group of employees.

[3] The hearing officer admitted into evidence, over the Employer's and Teamsters Local 710's objections, the record in Case 13-RC-15758.

2. Past practice

The Employer used servicemen to perform fueling, including fueling of forklifts, at the Effingham terminal. The Employer eliminated the serviceman classification at the Bedford Park terminal and utilized mechanics to perform fueling tasks. At Chicago Ridge mechanics initially performed the fueling work, including fueling of forklifts. Less than 3 months after opening the Chicago Ridge terminal, the Employer reassigned the fueling of forklifts to dockmen operating the forklifts who continue to do the disputed work. We find this history of the Employer's past practice of no help in resolving this dispute.

3. Area and industry practice

The Employer's competitors in the area have employees represented by Teamsters Local 710 fuel the forklifts. Therefore, the factor of area practice favors awarding the disputed work to the employees represented by Local 710.

The record contains no significant evidence on industrywide practice, and we therefore find that this factor favors awarding the disputed work to neither group of employees.

4. Economy, efficiency, and safety of operation

The Employer maintains that at Chicago Ridge it is more economical, more efficient, and safer to have the fueling of forklifts done at the dock by the dockmen who operate the forklifts. We agree.

At Bedford Park the dock was located only 200 feet from the shop, and a cement ramp connected the dock and shop areas. Dockmen drove the forklifts over the ramp to the shop for fueling by mechanics. At Chicago Ridge the dock is at least 1200 feet from the shop, and a gravel ramp connects the two areas.

The record indicates that the gravel ramp could not withstand repeated usage by forklifts and that the gravel would damage the forklift tires. Thus, the Employer would constantly be repairing the ramp and replacing forklift tires—expenses not incurred by having forklifts fueled at the dock.

To bring forklifts to the shop would be an inefficient use of dockmen who would have to wait in line with trailers that are fueled at the shop. Alternatively, for a mechanic to fuel forklifts at the dock would require either that mechanics make about 60 trips a day or that a mechanic fuel all forklifts at the beginning of each shift. The latter alternative would leave the shop short one mechanic for 1-1/2 hours at the beginning of each shift and would force forklift operators to waste time waiting in line. Finally, either bringing forklifts to the shop or sending mechanics to the dock would increase the risk of injury to employees or damage to equipment by trailers that move around the yard at 30–35 miles an hour.

Clearly, the Employer's use of dockmen to fuel forklifts is more economical, more efficient, and a safer utilization of manpower and equipment. We therefore find these factors favor awarding the disputed work to employees represented by Teamsters Local 710.

5. Employer preference

As mentioned above, the Employer assigned the work in dispute to dockmen because it perceived such an assignment was more economical, more efficient, and a safer utilization of manpower and equipment. The Employer maintains a preference to assign this work to dockmen. We find that the Employer's preference favors awarding the work in dispute to employees represented by Teamsters Local 710.

Conclusions

After considering all the relevant factors, we conclude that employees represented by Teamsters Local 710 are entitled to perform the work in dispute. We reach this conclusion relying on the Employer's preference to assign the disputed work to employees represented by Teamsters Local 710, the fact that this assignment is consistent with area practice, and the economy, efficiency, and safety of operation that result from such an assignment. In making this determination, we are awarding the work to employees represented by Teamsters Local 710, not to that Union or its members. The determination is limited to the controversy that gave rise to this proceeding.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

Employees of Yellow Freight System, Inc. represented by Highway Drivers, Dockmen, Spotters, Rampmen, Meat, Packing House and Allied Products Drivers and Helpers, Office Workers and Miscellaneous Employees Local Union No. 710, Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America are entitled to perform the fueling of forklift trucks at the Chicago Ridge, Illinois terminal.